

Guidance to Service Coordinators/Early Interventionists For Assisting With the Determination of Legal Responsibility

State Medicaid Policy does not allow the following family member/relatives to be paid for providing care or services to Medicaid recipients under any circumstances:

1. The spouse of a Medicaid recipient;
2. A parent of a minor Medicaid recipient;
3. A step parent of a Medicaid recipient;
4. A foster parent of a Medicaid recipient; or
5. Any other legally responsible guardian of a Medicaid recipient.

If a relative/family member is unsure about whether or not he/she is the legally responsible guardian of the Medicaid recipient, please consider and discuss with them the following indicators. Please remember that you do not need to reach a decision on your own. If, after considering the indicators noted, there are questions regarding legal responsibility, please forward pertinent information and questions to SCDDSN Central Office Waiver Staff and a legal opinion will be sought.

Is the person a minor (under age 18)?

If so, the minor must have a legally responsible guardian/be in someone's custody. For most minors, the parents are the legal guardian. For parents not to be the legal guardian, some legal/court action has to have occurred. If no legal/court action has occurred, the parents are the legal guardians.

- If the relative is not the minor's parent, has anyone gone to court to get custody of this child?
- Are there legal documents/court papers stating who has custody of the minor?

Is the person an adult (18 years of age or older)?

If so, people over the age of 18 are assumed to be competent and therefore may not have a legally responsible guardian. Parents are not automatically the legally responsible guardian of an adult with a disability. In order for anyone to be the legally responsible guardian of an adult, some sort of legal/court action has to have occurred.

- Are there legal documents/court papers stating that the person is not competent and appointing a guardian?
- If the documents exist, do they indicated that the action to be a general adjudication or is the adjudication limited?
- If limited, is the adjudication limited to health care decisions? *If so the person is considered to be the legally responsible guardian and therefore cannot be paid for services.*

- If limited, is the adjudication limited to financial decisions/conservator appointed?
*If so, the person may not be legally responsible; please forward to SCDDSN
Waiver staff for opinion.*

If there are any doubts/questions regarding legal responsibility, submit in writing a description of the concern/situation and any other pertinent information, including copies of legal/court documents, to SCDDSN Central Office Waiver staff.